

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

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5 United States of America, ) Case No. 13-CR-253 (DWF/TNL)  
6 )  
7 Plaintiff, )  
8 vs. ) St. Paul, Minnesota  
9 Mustafa Ahmed Mohamed, ) March 13, 2015  
10 Defendant. ) 2:09 p.m.  
11 )  
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13 BEFORE **THE HONORABLE DONOVAN W. FRANK**  
14 UNITED STATES DISTRICT COURT JUDGE

15 **SENTENCING HEARING**

16

17 APPEARANCES:

18

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35 Proceedings recorded by mechanical stenography;  
36 transcript produced by computer.

1                   **P R O C E E D I N G S**2                   **IN OPEN COURT**

3                   THE COURT: You may all be seated. Thank you.

4                   And I will just indicate, as counsel may be aware of the  
5                   reason we are in Judge Magnuson's courtroom, so the lawyers  
6                   in my case, in its sixth week over here -- we are down  
7                   today, so we don't have to move all of their things out. We  
8                   just lock that down. So, I have been using other Judges'  
9                   courtrooms.10                  So, the Court will call, United States versus  
11                  Mohamed. Why don't we have introductions, first, of  
12                  counsel. We can start with the Government's counsel?13                  MR. ENDICOTT: Good afternoon, Your Honor.  
14                  Bradley Endicott for the United States.15                  MR. RIVERS: Good afternoon, Your Honor. Bruce  
16                  Rivers on behalf of Mr. Mohamed, who is present and behind  
17                  me.

18                  THE COURT: Good afternoon, Mr. Mohamed.

19                  THE DEFENDANT: Good afternoon.

20                  THE COURT: I will represent to you that I have  
21                  had a chance to read all submissions, including the position  
22                  memorandums of each party. I will also make a suggestion on  
23                  how we proceed with the case this afternoon.24                  To the extent there remains any issue with the  
25                  computation of the Guidelines, and there may be with the

1 issue of the stolen gun status with respect to the firearm,  
2 I can hear any arguments, additional arguments on that.  
3 Because obviously as the parties are aware, they have a  
4 right to know what the starting point is for the Court  
5 before we begin sentencing, what the applicable guidelines  
6 are.

7 And once I have done that, I will proceed with  
8 separate argument on the 3553(a) factors. Is that  
9 acceptable to the Government?

10 MR. ENDICOTT: Yes, Your Honor.

11 THE COURT: Mr. Rivers?

12 MR. RIVERS: It is, Your Honor.

13 THE COURT: All right. Bear with me one moment?

14 (Discussion off the record.)

15 She has to retrieve something. I left my legal  
16 pad on my desk. Mr. Rivers -- and your client can remain  
17 seated for the time being, if he wishes because most  
18 people -- there are always exceptions -- don't like standing  
19 at the podium if they don't have to for a long period.

20 I will hear any additional argument with respect  
21 to the firearm status issue.

22 MR. RIVERS: Your Honor, to begin with, as I think  
23 I have demonstrated in my position pleading, and you can  
24 glean from the presentence investigation when my client was  
25 incarcerated and compare that to when the firearm was

1       stolen, my client was clearly not implicated in the theft of  
2       that firearm, number one. He was in custody serving a  
3       sentence on a burglary.

4                 And what is even more interesting in this case is  
5       after my client was arrested, Mr. Isaak in this case was one  
6       of the gentlemen down there. He took ownership of the gun.  
7       And so it is my contention that my client really had  
8       momentary possession of the firearm. There is no evidence  
9       to suggest other than that particular afternoon that he  
10      possessed it.

11               The guidelines are advisory. And I think that  
12       applying that enhancement would be unjust in this case. And  
13       so, that was my main reason for objecting to it.

14               THE COURT: All right. I will hear any additional  
15       argument from the Government.

16               MR. ENDICOTT: Your Honor, according to the U.S.  
17       Sentencing Guidelines, Section 2K2.1, Application Note 8(b),  
18       the provision for the firearm enhancement applies whether or  
19       not the Defendant knew or didn't know, or had reason to  
20       believe that the firearm was stolen.

21               In this case, I don't know if this is really an  
22       argument as far as whether the two points should be factored  
23       into the Guidelines, but rather how the two points should be  
24       assessed in coming up with the overall sentence. And I  
25       guess we don't have an argument against that, so to speak,

1 because you will take all of those factors into  
2 consideration.

3 But, as far as calculating the Guidelines, sir, I  
4 think the Guidelines are quite clear that the two points  
5 should apply in this situation given that there is no  
6 knowledge requirement for the stolen firearms enhancement.

7 THE COURT: Mr. Rivers, anything further?

8 MR. RIVERS: No, Your Honor.

9 THE COURT: Well, I will go ahead and make a  
10 decision on that, and then we will go to the, kind of, the  
11 arguments that both counsel spent some time on. Well,  
12 what -- no matter where the Judge starts -- what is a fair  
13 sentence in the case?

14 I will first indicate something that is not  
15 necessarily unique to this case, but -- and maybe it will be  
16 something that both parties will disagree with. I am going  
17 to go ahead and make a decision on this with respect to that  
18 provision and two-level enhancement, and then I will explain  
19 what that decision is in just a moment.

20 I, frankly -- and I will make it clear for the  
21 record for all purposes, that whether the advisory  
22 guidelines are 77 to 96 months, which is what -- without  
23 that enhancement, is what they would be, or whether they are  
24 92 to 115 months, I believe unless -- with everything I have  
25 read and know, and of course I am going to hear counsel out,

1 I believe at the end of the day under the 3553(a) factors, I  
2 am going to end up at the same place no matter where I  
3 start. And we will get into that.

4 And so, that doesn't mean it's any -- it's not an  
5 important issue to all parties. But, on the one hand I  
6 think it's crystal clear what the Guideline enhancement is  
7 and why they have made knowledge -- maybe knowledge or lack  
8 thereof should play a part in the -- under the 3553(a)  
9 factors; and what, if anything, a particular person in this  
10 case, Mr. Mohamed, knew.

11 On the other hand, I think it is equally clear  
12 that the enhancement, for the reasons the Government's  
13 attorney said, applies either way. And if the Court feels  
14 that, well, it certainly is relevant with respect to nature  
15 of punishment and relative culpability what the sentence  
16 should be, I think that is absolutely correct.

17 And with that in mind, and then there is kind of a  
18 middle ground, not to spend a lot of time on that, a middle  
19 ground that, well, even assuming that somebody didn't know  
20 at the time, and even assuming it's exactly as defense has  
21 suggested, well, the guideline is set up for the Court not  
22 to speculate about what knowledge that the person came into  
23 and when they came into it about, well, I wonder how much  
24 somebody did know about the history of the firearm, even if  
25 they initially didn't steal it or buy it.

1                   So, I think with all of those in mind, even though  
2 I have already kind of said, I believe whether I start at  
3 70 -- the Guideline level of 77 or 92, I believe I will be  
4 ending up at the same place.

5                   Noting the defense objection, I am going to impose  
6 that enhancement. And that creates a Total Offense Level of  
7 24, based upon a Criminal History Category of five, I know  
8 we will hear some issues about that, as well. That creates  
9 an advisory guideline of 92 to 115 months, and also a one to  
10 three-year period of supervision and a \$200 special  
11 assessment.

12                  And I didn't mention the fine, but that would be a  
13 fine of \$10,000 to \$100,000. And with that in mind, I will  
14 hear from counsel. We can start with defense counsel on,  
15 well, given all of the circumstances, here is why I believe  
16 you should impose no more than a 77-month sentence. So,  
17 counsel?

18                  MR. RIVERS: Your Honor, if we look at what this  
19 case started out as, a lot of these gun cases start out --  
20 the gun is ancillary to another case. So, even a 924 count  
21 that is consecutive to a drug count, for example. And we  
22 don't have that in this case. We gave a few young Somali  
23 men who were in a garage, some of which were complained of  
24 smoking marijuana.

25                  When we had the suppression hearing, there was no

1       marijuana found on my client, nor was he ever accused of  
2       smoking marijuana. He wasn't committing any other crime at  
3       the time.

4                   And then the other thing I would like the Court to  
5       take notice of is the lack of bullets in this case. In this  
6       case, I believe there was one or maybe two bullets in the  
7       magazine. And they were separated from the firearm.

8                   At no time was anybody in jeopardy in this case.  
9       And it is my contention, Your Honor, that the Defendant  
10      possessed that gun momentarily; that, you know, when the  
11      police came, somebody threw it to him, he hung on to it for  
12      a minute, threw it under the car in a panic and there he  
13      sits. And he has taken responsibility for it.

14                  He struggled with pleading in this case, as you  
15      recall, Judge. We got up to the day of trial and that is  
16      why he has got a two-level reduction for acceptance of  
17      responsibility. And I think he was confused because -- he's  
18      confused on a number of levels. When we got the initial  
19      PSI, it only had one of the felonies included, so the  
20      guideline calculation was lower, and then now it is higher.

21                  And so he feels a little like, well, they are  
22      piling on, so to speak. And that is because there was an  
23      error in the calculation early on. But, the other argument  
24      that I have, Your Honor, is if you look at his criminal  
25      history, I believe his criminal history is overstated. He

1       is getting quite a number of points for fairly low-level  
2       misdemeanor cases that, by themselves, would not have  
3       registered any points. But, they were registered as points  
4       because when he went to prison on a burglary case, they just  
5       executed everything. And because they executed everything,  
6       he gets credit for that time.

7                  And he does not have a -- he doesn't have any  
8       person crimes. He doesn't have any crimes of violence that  
9       are crimes that are qualifying for this particular case.

10                 THE COURT: Well, burglary in the first degree  
11       would clearly qualify, especially the facts -- even though  
12       the Judge gave him everything but a written apology in the  
13       sentence, 78 days, and probation. He was eventually  
14       violated twice, which I was going to ask you about. But,  
15       that burglary in the first degree charge back in 2006 would,  
16       I think, be considered by most, apart from the Federal --

17                 MR. RIVERS: That is true.

18                 THE COURT: -- other than the Federal Courts, the  
19       federal law has a very broad definition, frankly speaking,  
20       of violent felony --

21                 MR. RIVERS: I meant to say with that exception.

22                 THE COURT: Yes, but what's -- and I didn't mean  
23       to interrupt you, but what is most important for me to  
24       understand about a series of violations, and eventually then  
25       there was this sweetheart deal, I would say, on the burglary

1 charge, a stay of -- four years, probation, 78 days on a  
2 burglary in the first degree, and then an initial revocation  
3 of one year.

4 And then when the -- then another burglary  
5 happens, and then there was a total -- then they execute the  
6 whole sentence on the original one, 48 months and then run  
7 concurrent the 18 months on the less serious burglary and  
8 the new one.

9 What is most important -- and then, of course,  
10 here, as we know, this happened shortly after your client  
11 was released on the sex trafficking charge a few months  
12 later.

13 What is most important for me to grasp about that?  
14 Because I think you can be quite certain the Government's  
15 lawyer will address that when --

16 MR. RIVERS: And I am not saying any of those  
17 things shouldn't be taken into consideration. I think they  
18 should bear their full weight.

19 What I am saying is that the minor offenses, the  
20 trespassing, for example, he gets two points for  
21 trespassing. He gets two points for the gross misdemeanor,  
22 false information to police. Those would normally not carry  
23 any time in State Court. But because -- and so those are  
24 the only ones that I am really quibbling with, Your Honor.  
25 And he is really on the cusp, you know, of a five, and that

1       is why I thought he should be considered a four.

2                     And the other thing, Your Honor, I would ask, and  
3       I know depending upon the particular case, you have used it  
4       sparingly, but he has been in custody for going on two years  
5       on this case. This is a 2013 case. And I would ask you to  
6       factor in some hard time credit, if possible.

7                     My client has been a model prisoner for the last  
8       year and a half, almost two years. He has cooperated with  
9       me in every respect. He has been respectful of this Court  
10      even when he -- you know, a lot of times we can get up to a  
11      problem -- which I thought we were getting into just before  
12      trial. He was very respectful of this Court and wasn't  
13      obstinate. He just needed some explaining. And so, I am  
14      hopeful that you won't see him back here again.

15                  The other issue, Judge, that I would like to  
16      address briefly, and I don't know if Your Honor has the  
17      power to do anything about it. I think you do. And that is  
18      there is mention of this case that is up on appeal with the  
19      Sixth Circuit in this presentence investigation. It is a  
20      criminal sexual conduct type case in its nature. And I  
21      don't know if we can seal that from the Bureau of Prisons or  
22      not. But, I know even the mention of those kind of things  
23      have an impact on programming when he does go to prison.

24                  So, Your Honor, it is for these reasons that I  
25      believe that a sentence of no more than 77 months, and then

1 credit off of that for the hard time is where I would like  
2 you to start.

3 THE COURT: All right. Do you know if your client  
4 wishes to address the Court? Sir, you have a right to make  
5 any comments, if you want. You don't have to say anything,  
6 if you wish. Some defendants talk at these hearings, some  
7 don't.

8 The rule, as you may be aware, and of course the  
9 lawyers are aware, is the Court can't consider it in a bad  
10 or negative way if a defendant in any case chooses not to  
11 add something to what their lawyer has said. So, up to you,  
12 sir.

13 THE DEFENDANT: Your Honor, I just wanted to  
14 apologize for my mistakes, and I apologize to the  
15 Government. And I am taking full responsibility for my  
16 actions, and I hope to learn from my mistakes. Thank you,  
17 that is all.

18 THE COURT: All right, thank you. Mr. Rivers,  
19 were you -- when you were talking on appeal, are you talking  
20 about the case that is pending in Tennessee, that appeal?

21 MR. RIVERS: Right. That case was dismissed, and  
22 the Government appealed that case. That is the one I am  
23 talking about.

24 THE COURT: Okay, so that case -- that case, in  
25 other words, that your client was released on out in the

1 Middle District, that case has been dismissed against your  
2 client?

3 MR. RIVERS: It has, Your Honor.

4 THE COURT: I don't know if the Government is  
5 aware of that or -- I don't think if it has anybody has been  
6 notified in the Probation Department, here, or the U.S.  
7 Attorney. That doesn't mean we can't --

8 MR. RIVERS: While they are talking, Your Honor?

9 THE COURT: Yes.

10 MR. RIVERS: I did speak to his Public Defender in  
11 Tennessee and confirmed that it had been -- the Judge threw  
12 that case out and the Government appealed it. And I don't  
13 know what the status of the appeal is.

14 THE COURT: All right, fair enough. And I will  
15 address the concern you have at the appropriate time on the  
16 content of the PSR. And I can say it won't -- it is not the  
17 situation that the sentence is one thing with that case in  
18 and one thing without it.

19 So, I will deal with that. I will hear from the  
20 Government's lawyer. You may be seated if you want, Mr.  
21 Rivers.

22 MR. RIVERS: Thank you.

23 MR. ENDICOTT: Your Honor, good afternoon.

24 THE COURT: Good afternoon.

25 MR. ENDICOTT: As stated in our position paper,

1           the Government here is seeking a 104-month Guideline  
2           sentence, which isn't at the top of the Guidelines, but  
3           rather the middle of the Guidelines that we calculated that  
4           are applicable in this case for the following reasons under  
5           the 3553(a) factors.

6           Your Honor, first in consideration of the nature  
7           and the circumstance of the offense, the Government feels  
8           that -- or would contend that this was not a momentary or  
9           transitory possession, as the facts that are borne out in  
10          the Government's position paper.

11          The Defendant had several furtive movements. He  
12          went around a car, took this firearm and put it underneath  
13          another car, which actually caused a -- potentially, a very  
14          dangerous situation for not only the Defendant, himself, but  
15          his friends that were with him, as well as the police  
16          officers involved.

17          So, Your Honor, we would again argue that all of  
18          those things together show that this is not a momentary  
19          possession, but a rather purposeful possession. And the  
20          Government is not aware of any facts where there was another  
21          person that threw the firearm to Mr. Mohamed. It is our  
22          understanding that Mr. Mohamed had this firearm from the  
23          very first police encounter until he hid that firearm  
24          underneath the car in an attempt to hide it from the police.  
25          In addressing the issue, Your Honor, regarding the lack of

1 ammunition in this case, here the Defendant has pled guilty  
2 to not only the possession of a firearm, but as well as the  
3 possession of ammunition.

4 The ammunition in this case, some of that was  
5 found inside of the firearm, in the magazine. In the  
6 firearm there were two rounds inside of that handgun, and  
7 there was also one round that did fall out of the  
8 Defendant's pocket as he was placed in the squad car.

9 But, it is quite clear that two of those rounds  
10 were inside of that firearm when he was arrested. But,  
11 altogether, Your Honor, we believe that this is not just a  
12 simple possession. The possession here involved the  
13 Defendant trying to hide a firearm from the police, which  
14 again created a very dangerous situation for the Defendant  
15 and everyone else in that parking garage. And we would ask  
16 that you take that into consideration. But as far as the  
17 most weighty factors, Your Honor, the Government would  
18 submit that the history and the characteristics of the  
19 Defendant, as well as the need to protect the public from  
20 future crimes of the Defendant are the two most weighty  
21 factors in this case.

22 Here the Defendant is 26 years old. But, even  
23 with that young age, the Defendant has racked up quite a  
24 criminal history. In 2008 there is a felony conviction for  
25 tampering with a motor vehicle.

1                 Also, in 2008, there is a burglary in the third  
2 degree of an auto parts store. And in 2007 there was a  
3 first degree burglary which took place in a home that  
4 belonged to a female victim. And in that burglary the  
5 female was physically assaulted during that burglary. And  
6 that would certainly qualify, as the Court put it, as a  
7 personal crime.

8                 When the Defendant committed this offense, as  
9 well, he was also on pretrial release under very clear  
10 conditions of what he could and could not do.

11                 He was currently under indictment for conspiracy  
12 to commit sex trafficking of children by force. And while  
13 under that indictment and on pretrial release, he was found  
14 with this firearm.

15                 In consideration, Your Honor, too, of the 2000  
16 burglary, it seems like the Defendant kind of got a  
17 sweetheart deal with that probationary sentence.

18                 THE COURT: That would be a sweetheart deal.

19                 MR. ENDICOTT: And even with that, it seems up  
20 until now the message hasn't really kind of sunk in with the  
21 Defendant.

22                 As stated before, he has three rather -- or two  
23 violent felonies. And he is essentially one felony away  
24 from becoming an ACC the next time, if and when he does have  
25 a firearm. And really, Your Honor, I guess our argument

1       there is that the Defendant had his chances, he had that  
2       sweetheart deal, and he was also under clear instructions  
3       when he was on pretrial release from the Middle District of  
4       Tennessee. And even with that, that message hasn't sunk in.  
5       So, we would actually argue the opposite.

6                  As far as the criminal history goes, we would  
7       argue that it would be understated in this instance because  
8       of the past lenient sentences that the Defendant was been  
9       given in these instances.

10                 Also, Your Honor, you know, of course the  
11      Defendant has not been convicted of the crime that he was  
12      indicted for in the Middle District of Tennessee. Our  
13      understanding is that that case is still alive. I think it  
14      is under interlocutory appeal. That is what our  
15      understanding is, is that I think the Government is  
16      appealing that dismissal. So, from our understanding, that  
17      case is still live, but I can follow-up with the Court again  
18      after this hearing if the Court deems it necessary.

19                 But, we do have a clear -- we do have somewhat of  
20      a concern here given the victim and the burglary, given the  
21      nature of the offense that he was under indictment for  
22      involving female children.

23                 There is somewhat of a serious concern for  
24      protecting other future victims should the Defendant be  
25      released too soon. So, with all of those things in

1 consideration, Your Honor, we would ask that the Defendant  
2 be sentenced to 104 months.

3 THE COURT: I will hear any additional argument in  
4 rebuttal, if you wish, from defense?

5 MR. RIVERS: Just with respect to the Tennessee  
6 case, Your Honor, it was a multi-defendant case. And my  
7 understanding from talking to the Public Defender in that  
8 case, it was dismissed. They really didn't have any  
9 evidence against my client. And in fact I don't even think  
10 he was in the jurisdiction at the time. So, I don't believe  
11 that is proper for any consideration in this case.

12 THE COURT: You may be seated if you wish. And  
13 what I will say to both parties is rather than speculate,  
14 while it is relevant to the Court that Mr. Mohamed was on  
15 pretrial release conditions when this occurred, I won't  
16 speculate about that case in terms of whether guilty, not  
17 guilty, charged, not charged, dismissed, appealed. It  
18 plays -- with the exception of someone being on pretrial  
19 release conditions, and then this happening, because that  
20 isn't something the Court can ignore. Even assuming -- no  
21 matter what has happened with the charge, it plays no role  
22 in how I will sentence today with respect to making any  
23 assumptions about, well, is there a pending charge out there  
24 or isn't there? That will not play a role. And to that  
25 extent, while I don't think that -- while I don't think that

1       the reference in the presentence report will play a role  
2       with the Bureau of Prisons, but I can't guaranty that, I am  
3       just going to direct the probation officer, rather than get  
4       into an issue of, well, interlocutory appeal, appeal,  
5       dismissed, et cetera, et cetera, I think we will just remove  
6       it from the -- I will remove it from the presentence report  
7       when it goes to the Bureau of Prisons.

8                   So, where does that leave us with the sentence? I  
9       will explain what I am going to do and why. And then as the  
10      lawyers know, it just takes a minute or two to impose the  
11      sentence, itself. Then we will talk about the placement.

12                  I will say a couple of things. Whether I would  
13      end up under a strict application of the Guidelines and --  
14      in other words, whether the level should be a Criminal  
15      History Category III or IV, or V, in part because of the  
16      misdemeanors, I actually respectfully stated, I think, that  
17      no matter what category I am at, it doesn't capture how  
18      serious, one, a couple of these offenses were. And even  
19      more -- almost more important to the Court, frankly, than  
20      the seriousness of especially the burglaries in the current  
21      offense before me is -- and it is not a legal term, but  
22      whether it was an incredible, great plea bargain, or  
23      whatever, sadly it looks like -- and I say it respectfully  
24      to you, Mr. Mohamed, I don't think anyone is stacking on,  
25      but I don't think -- for reasons I don't quite understand, I

1       don't think we have been able to reach you. Because this  
2       burglary in the first degree, which is the most serious form  
3       of burglary under state law was a stayed sentence with time  
4       served, and then there was a violation with another  
5       burglary.

6                  And then while recently released, this offense  
7       occurred. And I believe -- so, I don't really know, and it  
8       doesn't look like even though there has been extensive,  
9       historically, at least, alleged to be marijuana use, it  
10      doesn't really look like that played a role in the most  
11      recent offense, maybe it did in others. But, nobody, maybe  
12      to your credit, has used that as an explanation.

13                 When I look at what is that sentence that will  
14      promote respect for the law, sufficient but not greater than  
15      necessary to do that, and also be careful not to create any  
16      unwarranted sentencing -- the fancy phrase is unwarranted  
17      sentencing disparities, but then also look at the "D" word,  
18      that there should be a better word for it, deterrence. One  
19      is, making sure I can reach you; but secondly, in the  
20      interest of the public, I think anything less than 98 months  
21      will not promote respect for the law, and that is whether I  
22      start at an adjusted level of 22, Criminal History Category  
23      III or IV, I can't see myself -- and I have taken into  
24      account -- the lawyers know I am one of the few Judges that  
25      will give some additional time off, because the Bureau won't

1       on this hard time, because there has been no appeal to the  
2       Eighth Circuit on that issue. Because I feel it fits under  
3       nature of punishment, and I can't ignore that.

4                 If it wasn't for that more difficult time, I would  
5       be at least at 104 months, frankly speaking. So, even  
6       though it is less than the Government wanted, more than the  
7       Defense, I believe that anything less than 98 months will  
8       not address the proper sentencing factors.

9                 So, if we could have counsel come to the bench?  
10       Mr. Mohamed, if you want to join your lawyer, please? And  
11       then we will talk about -- then we will talk about a  
12       facility in just a moment.

13                 As a sentence of this law and judgment of the  
14       Court, I commit you to the custody of the Bureau of Prisons  
15       for a period of 98 months. I impose no fine, given your  
16       financial circumstances. And are there any other forfeiture  
17       issues, firearms or anything?

18                 MR. RIVERS: I don't believe so, Your Honor.

19                 THE COURT: I do sentence you to a term of three  
20       years of supervised release. And since maybe -- I will say  
21       this to you, maybe you won't believe a word I say, but that  
22       is up to you. Some people have this idea that we don't care  
23       or -- and I don't think people pile on. I actually thought  
24       it was that the likelihood of a jury coming back with  
25       anything but a guilty verdict on the possession charge on

1       the facts were -- and we could just look at what has  
2       happened recently, because even though it is true, a lot of  
3       Guidelines are coming down on drug cases and stuff, they  
4       aren't doing so on any of the firearm cases because of --  
5       for a lot of issues.

6                   So, you can think as you will, but let me give you  
7       a couple of positive things, even though you're probably  
8       very upset about the sentence. That is, one, two out of  
9       three people that we sentence in Minnesota in Federal Court  
10      to prison, and when they come out never return. They don't  
11      violate.

12                  Now, the Minnesota State Court statistics are  
13       about -- they are double that, two out of three people do  
14       return to court. And there are a lot of different reasons  
15       for that.

16                  And then secondly, 94.6 percent of all defendants  
17       that we sentence that return from prison are employed as of  
18       today. So, I mean, the idea that there is no hope, that  
19       does not -- I still have a responsibility to impose a fair  
20       sentence, take into account public safety and all other  
21       issues. You owe me nothing, of course, but I think you  
22       should take a look at kind of where you are at, take a look  
23       at some of the programming inside of the federal prison  
24       walls and make a decision you will be in that group of two  
25       out of three that chooses not to return.

1                   And I don't know that a lot of people believe it,  
2                   but you can ask your lawyer in private, the large majority  
3                   of our probation officers, and why I think we have one of  
4                   highest -- or lowest rates of recidivism in the United  
5                   States, we are in the top five states in the country -- it  
6                   isn't the Judges. It is not us, it is Probation. It is  
7                   everybody else. They will enforce the rules, for sure, but  
8                   they don't give up on people, either. And so -- because  
9                   that is part of our job.

10                  So, here are the conditions of your supervised  
11                  release. First, the first condition that is mandatory, it  
12                  will -- I predict it will never happen. If it does, it will  
13                  be the first time in my 16 years here. For it to happen,  
14                  the Probation Department and your case manager with the  
15                  Bureau of Prisons will have just not talked to you and made  
16                  a release plan. That has never happened in the time I have  
17                  been here.

18                  So, what I mean by that is if nobody has talked to  
19                  you, you must report to a probation officer within three  
20                  days of your release, but I predict it will all be set up as  
21                  you're being released from prison. Second, you shall not  
22                  commit any crimes, be they federal, state or local. Third,  
23                  you shall not illegally possess a controlled substance,  
24                  unless something is prescribed by a doctor.

25                  And some people have asked me, well, that probably

1 doesn't include marijuana. Yes, it does. So, unless a  
2 doctor prescribes marijuana, until the federal law changes,  
3 and I predict it won't with respect to this, because some  
4 people have asked: Well, what if I am living in a state  
5 where they have legalized small amounts of marijuana? Then  
6 you better check with your probation officer, because I  
7 predict that won't be changing in the distant future.

8 But, apart from that, you will be tested once, as  
9 every federal defendant is coming out of prison within 15  
10 days, and two additional times after that.

11 You shall not possess a firearm, ammunition,  
12 destructive device or other weapon. And as your lawyer can  
13 tell you, the definition of possession is very broad and the  
14 laws are not going to change with respect to firearms. And  
15 so, you owe it to yourself to make sure that not only you  
16 don't have them on your person, but whether you're in a car,  
17 an apartment, a house, make sure that anybody around you  
18 that has a weapon -- they are putting you in harm's way,  
19 because constructive possession is that wide.

20 Every federal defendant since October of 2004 must  
21 submit to a DNA sample for criminal identification purposes.  
22 Probation will set that up for you. We will, because of  
23 what was said, even though I am not claiming this was a  
24 drug-related or marijuana offense, I will direct until  
25 somebody evaluates you and says no identifiable problem,

1       that you participate in a program for substance abuse as  
2       approved by Probation. You ask me about RDAP when we get  
3       done here in a moment, because if there is an identifiable  
4       problem, and oftentimes the State and Federal Courts are  
5       properly criticized for not screening for mental health and  
6       drug issues, and then that makes the door come open more  
7       frequently, and that includes everything from inpatient to  
8       outpatient to support group work, getting sponsors. We  
9       won't substitute our judgment for an expert, or an assessor,  
10      but we will evaluate that.

11           If you're not employed upon release, you will  
12      participate in our work program and work up to 20 hours at  
13      community service work, participate in any job fairs, other  
14      employment-related activities.

15           And like I say, 94.6 percent of our people  
16      currently on supervision are employed. Because is it true  
17      that there is a fair number of employers who won't hire a  
18      convicted felon? Yes. But, there's increasing numbers who  
19      do, and they call us, they call Probation and say -- because  
20      they know that if people are on supervision, they are  
21      working with their probation officer, they are reliable, and  
22      we actually -- not we, I don't mean me, but Probation gets  
23      calls from contractors saying: Can you send over six, ten  
24      employees, people? We have jobs for them. That happens  
25      these days.

1                   For yourself, I direct that you participate in an  
2 educational program, including make a good faith effort to  
3 get a GED or a high school diploma. I don't think you have  
4 done that yet, sir, have you?

5                   THE DEFENDANT: Well, Your Honor, I am in the  
6 process of doing that.

7                   THE COURT: And you owe that to yourself. And I  
8 will tell you one quick story that since I have firsthand  
9 experience with it, even -- and I grew up in a rural area  
10 of -- very rural area of Minnesota. But, even though my Dad  
11 was the second youngest of three brothers, and the second  
12 youngest of seven children -- he had four sisters. He had  
13 to quit school and work in eighth grade and work the farm.  
14 And he married the farm girl next door, so I have a very  
15 young-looking 83-year-old mother. But, the fact is he was a  
16 very smart, decent man, but people would say: Oh, no GED,  
17 no high school diploma. They would make stereotype  
18 assumptions about him, all untrue, not accurate. So I  
19 watched that myself, growing up as a boy and a young man in  
20 a small rural town in the state. So, I saw that happen.  
21 So, you owe it to yourself to do this, because people will  
22 make assumptions about it. It is not fair. But, you do  
23 that for yourself.

24                   I impose a \$200 special assessment for the Crime  
25 Victims Fund. That is not subject to suspension or waiver

1 and that is in every case.

2 I will set that on payments of \$25 a month  
3 starting sixty days after you are released from prison. And  
4 then if you're working in what is called a UNICOR or  
5 non-UNICOR program inside of the prison walls, they will --  
6 I will require you to pay \$25 quarterly towards that  
7 assessment, because there are two different types of  
8 employment. Some of the prisons have that, some do not.

9 Before we get to the issue of placement, counsel,  
10 you have a right to take an appeal from the case and the  
11 sentence. If you can't afford to hire a lawyer, one will be  
12 appointed to represent you at the public's expense. And the  
13 notice of appeal must be filed within 14 days after I file  
14 this judgment, which will be filed on -- probably not this  
15 afternoon, on Monday.

16 And your lawyer gets a copy because it goes to  
17 Texas. And it will take Texas -- they do everybody's -- the  
18 Bureau down there, and it will take them two to three weeks  
19 to make a decision. That is about what it has been running  
20 in terms of -- because we can make a recommendation, and we  
21 will talk about that right now. But, they make the final  
22 decisions.

23 We can sometimes predict what they might do in  
24 what we have seen, but they are not under an obligation -- a  
25 lot of us wish they were -- to follow our recommendations.

1           So, Mr. Rivers, do you have a recommendation to make?

2           MR. RIVERS: He would like to stay in Minnesota,  
3 if possible, Your Honor.

4           THE COURT: I can recommend Sandstone. I doubt  
5 that the Government will oppose that?

6           MR. ENDICOTT: No objection.

7           THE COURT: I think there's -- and even though  
8 they don't consult me, they don't consult Probation, we all  
9 find out together. Ms. Wickenheiser, I am thinking that it  
10 might be more likely he might be approved for Oxford -- I  
11 will recommend Sandstone. I am just being upfront if you  
12 say, well, I thought the Judge recommended -- it is possible  
13 you will get Sandstone. And actually both Sandstone and  
14 Oxford, Wisconsin, which would be the next closest, which I  
15 think would most certainly be approved, they both have the  
16 RDAP Program, as well.

17           THE PROBATION OFFICER: Yes, Your Honor.

18           THE COURT: I'm sorry to use the initials,  
19 Residential Drug Alcohol Treatment Program. Would you like  
20 me to recommend that, Mr. Rivers?

21           MR. RIVERS: I do, Your Honor.

22           THE COURT: You owe it to yourself to give that a  
23 try, Mr. Mohamed. So I will recommend Sandstone. They do  
24 have similar programings in both places, so I will recommend  
25 Sandstone. We won't find out for two to three weeks.

1                   And then they will compute the amount of time you  
2 have been in custody. And they must get it right most of  
3 the time, because they do a couple of things. They subtract  
4 that off, and you don't get as much good time. It is a  
5 little less than half of what you get under state of  
6 Minnesota "good time" rules.

7                   But, they will compute your good time, then they  
8 will take off the time you've been in custody. Then there  
9 is another federal law that states in addition to that, they  
10 can be released into the community. They can take off up  
11 above that 10 percent of the sentence imposed, and it can  
12 never be more than an additional one year. And they will  
13 give you a target release date soon after you are there to  
14 say, here is the date if you qualify for all of the good  
15 time.

16                  Now, you will also find out, and I didn't make any  
17 assumption one way or the other, and very few judges do.  
18 Some people ask questions about, well, we've heard that if  
19 we participate in the Residential Drug Alcohol Treatment  
20 Program in addition to normal good time there is an  
21 additional one year off.

22                  That is true; however, I believe you will find out  
23 under the Federal Regulations, and it has nothing to do with  
24 the position anybody in this room including me takes,  
25 because there is a firearm involved in a charge, I believe

1       you will learn that you don't qualify for that extra time  
2       off. But, I would still urge you to consider participating  
3       in that and any other programming. And I think you have a  
4       good chance of -- I have seen a number of people do  
5       vocational training and do their GED inside of the prison  
6       walls.

7                   So, Mr. Rivers, anything else at this time?

8                   MR. RIVERS: No, Your Honor.

9                   THE COURT: Any questions of me, Mr. Mohamed?

10                  THE DEFENDANT: No, Your Honor.

11                  THE COURT: Anything further by the Government?

12                  MR. ENDICOTT: Just a few things we would like to  
13       clarify for the record, Your Honor. I realize -- well,  
14       first addressing the forfeitures, I don't think, just for  
15       the record, I don't think there is any contesting of the  
16       forfeiture of the firearms and ammunition involved in this  
17       case. Those are the only physical items involved here.

18                  And also for the record, I believe my memory may  
19       have failed me, and I may have misspoke during argument as  
20       far as the magazine. The facts in the PSR and the  
21       Government's position paper is correct.

22                  THE COURT: Right, right.

23                  MR. ENDICOTT: The gun was found underneath the  
24       car, but the magazine was found in the jacket pocket, not in  
25       the gun. So, I just wanted to clarify that the PSR is

1           correct, Your Honor.

2           THE COURT: Anything further, Mr. Rivers?

3           MR. RIVERS: No, Your Honor.

4           THE COURT: And do you need to see, Ms.

5           Wickenheiser, Mr. Mohamed or counsel for anything here?

6           THE PROBATION OFFICER: No, Your Honor.

7           THE COURT: All right. We are adjourned. And  
8           then what I will do is, I'm just going to ask, Penny, if you  
9           would just remove that paragraph on the -- so I am not going  
10          to speculate about Tennessee. I don't think it will affect  
11          the placement, but let's just remove that before it is sent  
12          down to the Bureau of Prisons.

13           THE PROBATION OFFICER: Yes, Your Honor.

14           THE COURT: All right. We are adjourned.

15           (Adjournment.)

16                           \*        \*        \*

17

18           I, Jeanne M. Anderson, certify that the foregoing  
19          is a correct transcript from the record of proceedings in  
20          the above-entitled matter.

21

22

23

Certified by: s/ Jeanne M. Anderson  
Jeanne M. Anderson, RMR-RPR  
Official Court Reporter

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25